

Speech of the
Hon. Daniel Sheffey

10th December, 1814

SPCL

E

357

S54

1814

SPECIAL COLLECTIONS
LIBRARY
BROCK UNIVERSITY

SPEECH

OF

THE HON. DANIEL SHEFFEY,

ON

The Bill

“TO AUTHORISE THE PRESIDENT OF THE UNITED STATES
TO CALL UPON THE SEVERAL STATES AND TERRITORIES
THEREOF FOR THEIR RESPECTIVE QUOTAS OF EIGHTY
THOUSAND MEN FOR THE DEFENCE OF THE FRONTIERS
OF THE UNITED STATES AGAINST INVASION.”

DELIVERED

IN THE HOUSE OF REPRESENTATIVES OF
THE UNITED STATES,

ON THE TENTH DAY OF DECEMBER,

1814.

WASHINGTON CITY,

PRINTED BY RAPINE AND ELLIOT,

nearly opposite the East End of Congress Hall.

S P E E C H

OF

THE HON. DANIEL SHEFFEY.

MR SPEAKER,

I beg the attention of the house, while I submit a few observations, on the subject under consideration. It is not my intention to investigate the details of the bill before you minutely; but to confine my remarks to some general principles, which have been brought into discussion.—With the honorable member from New-Jersey (Mr Stockton) I am conscious of the awful crisis at which the affairs of this country have arrived—with him I admit that ruin is staring us in the face on every side—with him too I feel it to be my duty to contribute my efforts to rescue this devoted nation from the impending calamities. Considering the revival of public credit (at present prostrate in the dust), and the security of the country from foreign danger, of vital interest to us all, I shall most cordially co-operate in such measures as may be calculated to effect these great ends.—I shall pursue this course, though I did not participate in the councils, whose temerity and folly, have precipitated us from the highest elevation of national prosperity, to the lowest abyss of suffering. But with a sincere determination to go every reasonable length in the course thus marked out, I shall not consider myself bound to accord in every measure that may be proposed under the name of a remedy for existing evils. To obtain my approbation, there must be, according to my judgment, a natural connexion between the *means* and the

end. The means too must be of a character suited to the spirit of free institutions, that the great principles of civil liberty, on which this government is erected, shall not be violated.

Formidable and alarming as the dangers may be which threaten us from abroad, I shall not forget that the country has other interests at stake, of equal consideration with its independence, and as necessary to be preserved—that public liberty merits a full portion of our solicitude. It will be a paltry object to remain independent, unless we also remain free. Shall the shackles of domestic slavery be the only reward of this people for their toils and sufferings, in expelling from their soil a powerful enemy? For myself, Sir, holding the opinion *once* entertained by some of the leading men now in power to be indubitably correct—That the liberties of a free people are most in danger *at home*, in time of *foreign peril*—I shall deem it my duty to look with a vigilant and jealous eye on the public measures. It will be an object of the first importance with me, that when the valour and patriotism of the people shall have successfully resisted their external enemy, there may be left something worthy of their exertions—that there shall remain to them a country worth preserving.

The present period has given birth to doctrines more alarming than all the other dangers which surround us. On the part of those in power, claims have been set up, tending to subject the life and liberty of every member of the community to their arbitrary and unlimited control. Should they succeed in enforcing these claims by practical measures, the great principles of this government must necessarily be subverted. Its character will no longer be free ; or its powers limited. By one effort they will alike prostrate the authority of the States and the liberties of the people.

The Secretary at War, the official author of these high toned pretensions, recommends that we should raise a regular force of one hundred thousand men, to be employed in offensive operations in Canada. To obtain and keep up that number, he proposes substantially that the people shall be **COERCED** in-

to the ranks of the army, if they will not, or cannot, procure the requisite number of recruits by contract. Aware that such a proposal would raise the indignant feelings of freemen, and that the power of this government to adopt a measure so violent, would be seriously questioned, he submits to us a course of reasoning, which with him and (from what we have heard on this floor) with others, seems to be conclusive. He informs us, that "Congress have a right, by the constitution, to raise regular armies, and no restraint is imposed on the exercise of it." That "an unqualified grant of power gives the means to carry it into effect." This, he says, "is an universal maxim, which admits of no exception." Hence the honourable Secretary infers that you have the power to drag the citizens from the land of his birth to be slaughtered on the plains of Canada. To force the father, the only support of a destitute family, and the son, the comfort of his aged parents, to undergo the miseries of a camp in a foreign country. I meet this bold pretension as I would every attempt at usurpation. I deny the right to convert a nation of freemen into slaves, under any pretence whatever. I take upon myself to assert, that no such power can be exercised by this government; or by any other which maintains any respect for the liberties of its people.

That the authority of this government in the execution of its power (where not expressly restricted) is *sovereign*, I am not disposed to controvert; but that it is *despotic* I can never admit. Every free government possesses sovereign power over the means necessary to the attainment of its legitimate objects. But in the selection of those means, the security of life, liberty, and property, cannot be disregarded; because that security forms the great end for which all power was granted. This great principle can never be infringed, or the people are not free. Hence the opinion of some of the wisest and best men that ever lived, that laws violating this security, where the government is not absolutely despotic, are void.

The objects for which the government was instituted are not left to conjecture. The men who framed and those who adopted the present constitution, thought it necessary to transmit to those who should live after them, the most conclusive evidence of the views with which they entered into this new political compact. Not content that they should be inferred from the limitations and restrictions of the powers granted, they declared them in terms thus express and unequivocal—"To form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defence, promote the general welfare, and *secure to themselves and to their posterity the blessings of liberty.*" These were the *ends*, for the accomplishment of which *all the powers* vested by the constitution, in the United States, were granted; and now it is asserted that the powers so granted may be executed in a manner wholly regardless of the ends in view—that to "raise armies" the government have the right to adopt measures by which the people and their posterity shall be deprived of the "blessings of liberty."

Sir, I have said that if the principles assumed should receive countenance in this country, not only the liberties of the people, but the authority of the states would be alike annihilated. There is no act of tyranny which may not be perpetrated with as much plausibility as the measure demanded by the administration at our hands. It has already been ably shown by an honorable member from New-Hampshire (Mr. Webster) that the same construction that authorizes you to drag the citizen by force into the ranks of your army, will warrant you to enter into his dwelling and force from him his money. The analogy is unquestionably correct. The power to "borrow money," is as unrestrained as the power to "raise and support armies." Under the latter power you claim arbitrary dominion over the *life and liberty* of the citizen, because it contains *no express restriction*. Why (I ask) not over his *money*, when the power "to borrow" it is equally unrestrained? Is there any distinction in the nature and reason of the subject, that would make his *money* sacred while his *person* is at your mercy? Will it be said

that the poor man may be coerced into the field to meet misery and death, leaving a helpless family without support, and that his wealthier neighbours' *money* is not equally subject to your power? This cannot be asserted with the least shadow of reason. If there is power to compel the one to render his person, there is power to compel the other to render his money to your service.

The analogy becomes still stronger as the subject is pursued. To justify the claim set up over the persons of the people, the secretary at war tells us—"That the conservation of the state is a duty paramount to all others"—that therefore "the commonwealth has a right to the *service* of all its citizens." Does "the conservation of the state" depend alone on "the *service*" of its citizens? Is *money*, justly termed the sinews of war, not equally necessary to render that "service" beneficial? Are the "citizens" to be coerced into the field to perish for want of subsistence, or to fall before the enemy for want of the necessary means of defence? If "the conservation of the state" will warrant you to coerce "the *service* of the citizens" when you are destitute of *men*, and can not get the requisite number in any other way, it will surely warrant you to coerce their *money* when the same necessity exists, as indispensable to the attainment of the same end.

We are further informed from the same quarter, that "it would be absurd to suppose that Congress could not carry this power (to raise and support armies) into effect otherwise than by accepting the voluntary service of individuals." "It might happen that an army could not be raised in that mode, whence the power would have been granted in vain." The position here assumed is—that *all* the means that will *give effect* to any of the delegated powers, of *whatever character*, are within the controul of Congress, if without the means proposed to be employed, the power could not be executed, at the time, to the extent required by public exigencies, real or pretended. Hence it clearly follows, that whenever money cannot be obtained by voluntary loans, when the government is hardly pressed, the

power "to borrow money" may be executed by *compelling* individuals to loan, otherwise "the power would have been granted in vain." Apply this *monstrous* principle to the present state of things in this country. Your treasury is exhausted. There is at this moment a deficit of many millions. Your soldiers are unpaid. Your militia, in the inclement season of winter, are discharged without money enough to defray their expences to their homes. You have used every effort to borrow money in the ordinary mode "in vain." You have not been able to obtain sufficient to discharge the interest of the public debt, and save the treasury notes falling due from being dishonored. In truth, the government is on the verge of bankruptcy. Now with this convenient power at your command, why not *borrow* money at the point of the bayonet? If you do not, the power to borrow has "been granted in vain." Nay, why not, if this mode should fail, take the people's property to "support your armies," or sell it under the hammer and give the owner a certificate for the proceeds, as for so much money borrowed? Should you want precedents for such atrocious acts, you would find them in the history of the same despotic governments, whose examples have been cited by gentlemen on this floor, to prove the right and the propriety of coercing American freemen into the ranks of your army.

The honorable gentleman from New-Hampshire (Mr. Webster) has also most clearly demonstrated that if the construction given to the constitution, by the secretary at war, is correct, you have the power to take by violence the ships of your merchants and convert them into ships of war, and to man your navy by impressment. The conclusion of the honorable gentleman is inevitable, admitting the secretary's reasoning. The power "to provide and maintain a navy" is wholly unrestricted. "The conservation of the state" may, and in reality does, depend as much on a competent naval, as on a land force; and therefore the same principle which sanctions coercion to raise an army, will bear you out in using the means stated, "to provide a navy;" yet the same person who has attempted to impose

the doctrine upon this body, that *every man in the nation* can be coerced into the *army*, has, on another occasion, denied that *a single citizen could be impressed into the navy*. In the instructions to our ministers appointed to negotiate a treaty with Great-Britain, which he composed, as secretary of state, he says—that “impressment is not an American practice, *but utterly repugnant to our constitution and laws.*” What must every impartial man think of such morality? When *one* object is sought to be effected, it is asserted, that coercion is “utterly repugnant to our constitution”—when *another* is desirable, we are told that “it would be absurd to doubt the right to employ it to every possible extent.” Or are *seamen* exempt from your power and *landsmen* only subject to it? Surely no such absurdity as that will be insisted on.

The practice of impressment, as exercised over her seafaring subjects, by Great-Britain, has been for years a fruitful theme of declamation, in this house and elsewhere. The incessant efforts that were made to irritate the people against this crying iniquity (as it was characterised) was not among the least of the causes which exasperated the public feeling, and prepared the country for hostilities. The sufferings of the incarcerated seamen, in the “floating dungeons of England,” haunted the imaginations of a certain class of politicians, and seemed to be the sole object of all their sympathies. Little did they suppose that in a very short time it would become *convenient for them* to claim and execute this abhorred and despotic power over their own people. Gentlemen ought to take back their reproaches and denunciations against this practice, since they have become convinced that it is nothing more than a legitimate right, necessary to “the conservation of the state.” Unless, indeed, there is a distinction between the sufferings of him who is torn from his family and friends, and immured in one of the “floating dungeons of England,” and him who shall be taken by like violence, and under like circumstances, and confined in an American ship of war.

Sir, if in the execution of the powers expressly confided to

this government, you have the right to use arbitrary and despotic means to obtain the end, what will prevent you from imprisoning, for life, the man on whom you shall impose a capitation tax, which he is unable to pay? or what will prevent you from selling him as a slave in the market, to obtain the money which you may levy on him, when his poverty denies you the means of enforcing payment in any other manner?

Congress are authorized by the constitution, to define and punish certain crimes. They have, moreover, the power to *create* offences and provide for their punishment, as necessary sanctions to their laws. In neither of these cases is their discretion *expressly* limited. But can they therefore direct that the accused shall be put to the rack, and that his confessions extorted under the torture shall be evidence to prove his guilt? If all these things can be done by this government, without transcending its constitutional limits, then has the blood of the revolution flowed in vain—then was the manly and patriotic resistance made by the fathers of American independence, to the claims of Great-Britain, worse than useless—then was the solicitude of the framers of our constitution, to “secure to themselves and their posterity the blessings of liberty,” wholly unavailing.

What becomes of the authority of the states, if the omnipotent power ascribed to this government properly belongs to it? It will be a mere shadow—an empty name. You have already given *capacity* to persons under age to enlist in your armies, against the consent of their parents, guardians, or masters, while under the laws of the states, they are *incapable* of making *any* contract. What prevents you from giving the same *capacity* to slaves, that they may become soldiers? There is no distinction in principle, and certainly none in reason. The incapacity of infants and slaves depends alike on the municipal laws of the states. Those who authorize the son, in the giddy moments of youth and indiscretion, to be torn from the bosom of his parents, will surely not stickle for the rights of the master, to secure to him his property in his slave.

It is not only in these instances that the power of the states will be subverted, but the great principles of society resting on municipal institutions, must be wholly overthrown. Let me state one or two examples. If you have the right to *raise* an army in *any way* which is calculated to attain the object, then you have the right to defeat the criminal justice of the states by absolving from punishment those accused or convicted of crimes, on condition that they enter your army. You may change the course of descents, and repeal the statutes of wills, by holding out the inducement to recruits, that the *sole* inheritance of their ancestors' property shall belong to them, and that their right shall not be defeated by any testamentary disposition. Is there a man who, in the face of this people, dare assert that such powers belong to this government? And yet they unquestionably do, if it is correct that the power "to raise an army" is subject to *no* restriction.

In relation to the militia, pretensions equally exorbitant have been advanced on the part of those in power. They are considered as under the *absolute* controul of this government, to be called forth *when it* may think proper, in *any* number, to be employed in *any* service, and retained for *any* period. Nothing can be more incorrect in principle, and more dangerous in practice, to this community, than this assumption. It effectually prostrates the state sovereignties, and destroys the security of the people from oppressive military service. To me it seems evident that the *general* power over the militia was intended, by the authors of the constitution, to *remain* with the states, while a *special* power, arising out of, and limited by, certain emergencies, was confided to this government. This is obvious to my mind, from the *nature* of the subject, as well as the express provisions contained in that instrument. The enlightened men, on whose labours depended the fate of their country, understood the nature of man, his thirst for dominion, and the character and tendency of human institutions:—they knew that *political* power, without *physical* means to secure it, and give it effect, was a mere mockery. Is it reasonable,

therefore, to suppose, that while they transferred a *portion* only of the *whole* sovereignty to the United States, they intended to invest them with an absolute controul over *all* the physical means of the community? What will be the condition of the states, should this construction obtain? They will be at the mercy of this government. The most palpable infraction of of their rights must be submitted to. Aggression will succeed aggression, until consolidation shall terminate even the appearance of state authority. Sir, very different opinions were entertained in this country at the time the constitution was adopted. It was considered (as is evident from a work of high celebrity written at the time) that the states were independent political bodies, whose *powers and means* afforded the best security against the encroachments of the general government, and who would employ *force*, if necessary to resist such encroachments, whenever they should be seriously attempted.* How, I ask, can the states resist usurpation, if we possess a *supreme and general power* over the militia? They may indeed call them to their aid to maintain the remnant of sovereignty left them; but such call will be nugatory. The United States (according to the doctrine of the day) may at any moment assume the controul over them, and place them into *their* service—in which situation they are under the *sole* command of this government, and subject to the rules and articles of war. Should any of them refuse to be employed, to further the projects of ambition, and to prostrate the authority of their native state, punishment for mutiny awaits them. The minions of

* The following is an extract from the 46th number of the Federalist, written by MR. MADISON.

“But ambitious encroachments of the federal government, on the authority of the state governments, would not excite the opposition of a single state, or a few states only. They would be signals of general alarm. Every government would espouse the common cause. A correspondence would be opened. Plans of resistance would be concerted. One spirit would animate and conduct the whole. *The same combination, in short, would result from an apprehension of the federal, as was produced by the dread of a foreign yoke; and unless the projected innovation should be voluntarily renounced, the same appeal to a trial of force would be made in the one case, as was made in the other.*”

power will be ready to execute upon them the despotic provisions of military law.

There are other considerations which strongly tend to establish that the *general* power over the militia, was deemed essential to the security of the states. They are prohibited in time of peace from keeping in their service any regular force; yet it is indispensable to their own existence that they should possess military means to maintain their own authority, to suppress conspiracies and insurrections, and to repel invasions when suddenly made, or when the United States have not provided a force competent to resist the invader. How, I ask, can these objects be effected, if the militia can, at the discretion of this government, be withdrawn from their controul.

What I have said hitherto on this part of the subject has arisen from the *character* of the American confederacy. My object was to show that as the whole sovereignty was *divided* between the States and the United States, so a *division of the means* to maintain each in its portion, would be a just inference deducible from those premises. That as the United States had *general* (and in time of peace exclusive) power to raise armies to effect *their objects*, it was rational to infer that a general power over the militia remained with the States as necessary to the attainment of their ends. I will now beg leave to request your attention to the express provisions of the constitution on this subject.

When that instrument was formed, it will be recollected, that the sole power over the militia was vested in the States. By the confederation they were enjoined, “to keep up a well regulated militia;” but no authority to employ them was granted to the United States in any event. They were, in every sense of the term, “the militia of the States.” In this situation of things, while the power of the States, in relation to this subject, was *general and exclusive*, the new government came into existence. Its powers were composed of *all* powers vested in Congress under the confederation, and a *portion* of those belonging to the States. To obviate the necessity of keeping up a

large military establishment in ordinary times, the United States were empowered to call “the militia of the States” to *their aid in certain sudden emergencies; to enable them to execute their laws, repel invasion, and to suppress insurrections.* And as in the performance of those duties, it was possible that the militia of the different States might be brought to act together in one corps, it became important that there should be uniformity in their organization and discipline. Hence arose the power of Congress over these subjects, as necessary *instruments* to render the service of the militia, *in the cases provided for*, more effectual than could have been expected from the discordant regulations of the different States.

Thus it appears to me, that the power granted to us to *employ* the militia is in its character *qualified and contingent*:—always dormant and inactive until the emergencies provided for in the constitution give it life and vigor; while the power of the States is *general and exclusive, except so far as the actual existence of these emergencies interfere.* From this position it seems to me necessary to follow, that the *qualified* cannot be exercised in such manner as to destroy the *general* power. That the proper State authorities have the unquestionable right to judge for themselves, whether the actual situation of the country demands the exercise of the *qualified* powers of this government to call forth the militia. The principle is universal and applicable in all cases. Where a general right exists in one, and a *qualified* right in another, over the same subject, he who possesses the latter cannot be permitted to decide *alone* that his right attaches. If he could, his right instead of being *limited* or *contingent*, would be absolute.

By the provisions of the bill before you, a general power over the militia is assumed.—They are not to be called forth *when any constitutional emergency* shall authorise their employment: but the call is immediate and peremptory—their service is not to be limited, by the *duration* of any such emergency, but by a definite and distant period; or by the *discretion* of the executive. Nor is that service to be confined to the

objects designated in the constitution, but to be used for the general purposes of war. And these provisions are adopted for the avowed purpose of compelling the militia, rather than submit to the hardships *created* by your law, to furnish recruits for your army. It is not necessary for me to show that you have no more right to exact this commutation, than you have to demand the service from the militia.

To give some plausibility to the highhanded measures proposed during the present session, attempts have been made to depreciate the value of the militia, in the public estimation. The cry has been raised that they are wholly useless and incompetent to the defence of the country. It is observed by a celebrated writer of the last century, equally distinguished for his eloquence and his knowledge of public men, and public affairs, that those whose object it is to enslave the people, first endeavour to degrade them in their own eyes. Where is our security against the usurpation of those who command the public force, if the militia is thus inefficient? It is only necessary for the people to believe the libels so industriously circulated against them, and slavery must be their lot.—Sir, I believe the militia more competent to the defence of the country against the predatory warfare of the enemy, than *any force you can obtain*. Whenever the idea shall become general that you cannot rely on the militia, and some other force shall be substituted in their stead, it will beget the same indifference among the great body of the people, which exists in other countries. If you once persuade them that their services, their privations, and their blood—are wholly unavailing, do you presume they will feel disposed to make *useless* sacrifices? If it was possible for you to procure a regular force of two hundred thousand men, on whom alone for all military purposes, our whole reliance should be placed in this war, I do not believe that to all essential purposes the country would be better defended than it is at present. That portion of the force which *would* be spared from the Canadian warfare, must be distributed along our extended maritime frontier, in such

manner as to occupy the most prominent and important points only. All other places must be left wholly defenceless; consequently to the enemy having the command of the water assailable. In such a state of things, the enemy would have *only* to dread the force *actually embodied* in the neighbourhood of his attack, and make his movements accordingly. At present he knows that every man in the country is one of its legitimate defenders, *upon whose services it relies*. That circumstance is calculated to inspire him with a proper portion of caution, and tends to limit the extent of his incursions.

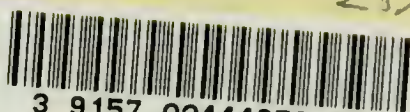
If the object of the enemy had been the conquest of our country, and if that object depended on a few great and decisive actions in the field, I admit that the militia would not be the proper kind of force to oppose to him. In such actions discipline and experience, which the militia from the short periods and nature of their service, cannot possess in an eminent degree, are generally essential to victory.

We are frequently told that we *oppose* every thing coming from the majority, and that we *propose* nothing calculated to save the country from the perils which surround us. This is an old and a stale accusation. As long as gentlemen are determined to disregard our councils, how can they ask us to submit to the repeated mortifications of having our propositions rejected? On the present, as on many other occasions, however, the assertion is not founded in fact. The honorable gentleman from New Jersey (Mr Stockton) has marked out the course for you in detail; permit me to repeat his admonitions, in substance.—Abandon the project which experience has stamped with folly, of conquering Canada. Manifest a determination to defend your country, by constitutional means. Banish from you all idea of conscription to fill the ranks of your army. Inspire confidence by a just, liberal, and conciliatory policy—and I hesitate not to say, that the present dangers will pass away, and that the country will remain independent and free.

I know that the situation of gentlemen in the majority is different from my own. Having by an ill-judged and unfortunate course of policy brought this nation into a condition admitted on all sides to be extremely perilous and alarming, they feel the high responsibility that awaits them, should the country perish in their hands. In the anxiety which such a situation necessarily begets, the *character* of the means will not be very scrupulously examined, if there is *hope* that they will serve the end. *Something is necessary to be done.* I warn gentlemen against the influence of this sentiment. It has been the bane of this country. Ever since I have had the honour of a seat in this house, it has given birth to all the measures connected with your foreign policy. The commencement of every session brought with it a deep conviction that something was necessary to be done, but it did not bring with it the *lights* requisite to judge correctly—*what it ought to be*. Hence it happened that we were plunged from one difficulty into another still greater, until, at last, we find ourselves in a condition almost hopeless.

Sir, it is not my intention to menace gentlemen with the prospect of forcible opposition to their projects of coercing freemen, into the ranks of the army—but I will take the liberty to offer my admonition. Permit me to say, that a period like the present, when your treasury is exhausted—when all your operations are almost at a stand for want of means to impel them, is not the season for violent measures. Every government becomes imbecilitated, when its finances become deranged; and in this government more than any other money is the vital principle of action. The catastrophe which deprived Louis XVI of his life—that tremendous revolution which has been the cause of so much calamity to the whole community of civilized man, would never have happened, had France not been bankrupt in her finances.

282922



3 9157 00444872 9

SpCI

E

357

S54

1814

BROCK UNIVERSITY

ST. CATHARINES, ONTARIO



LIBRARY

FOR USE IN SPECIAL COLLECTIONS ONLY

